

46 Am. Jur. 2d Judges § 9

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Judges

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II. Qualification and Selection

§ 9. Method of selection of judge—Appointment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  3, 4, 5

Forms

Forms relating to appointment, see Am. Jur. Legal Forms 2d, Judges [\[Westlaw®\(r\) Search Query\]](#)

There is no federal constitutional or statutory principle that requires that state judges be elected rather than appointed.¹ In some states, judges are appointed by the governor² or by the legislature.³ Judges generally may not be appointed by other judges.⁴

The Federal Constitution provides that federal judges must be appointed by the President of the United States by and with the advice and consent of the Senate.⁵ The President has the power to appoint judges during a recess of the Senate and may exercise the power even if the vacancy occurred while the Senate was in session⁶ or during an intrasession break, even when the vacancy occurred prior to the break.⁷

Practice Tip:

In the absence of statute, a person who has no interest other than as a citizen and a member of the bar of a court may not question the validity of the appointment of a judge.⁸

CUMULATIVE SUPPLEMENT

Cases:

Administrative law judges (ALJ) of Securities and Exchange Commission (SEC), to whom SEC could delegate the task of presiding over enforcement proceedings, were "Officers of the United States," within meaning of Appointments Clause; ALJs had career appointments to a continuing office established by law, and they exercised significant discretion in carrying out important functions, with all the authority needed to ensure fair and orderly adversarial hearings, and nearly all the tools of federal trial judges. U.S.C.A. Const. Art. 2, § 2, cl. 2; 5 U.S.C.A. §§ 556, 557, 3105, 5372; 15 U.S.C.A. § 78d-1(a); 5 C.F.R. § 930.204(a); 17 C.F.R. §§ 200.14(a), 201.110, 201.111. *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Pocker v. Brown*, 819 F.2d 148 (6th Cir. 1987).
- 2 *State v. Wilson*, 545 A.2d 1178 (Del. 1988).
As to the appointment of judges in occupied territory, see *Am. Jur. 2d, War* § 121.
- 3 *Murphy v. City of Mobile*, 504 So. 2d 243 (Ala. 1987); *State v. Clark*, 87 Conn. 537, 89 A. 172 (1913).
- 4 *Ohio State Bar Assn. v. Shattuck*, 85 Ohio St. 3d 334, 1999-Ohio-271, 708 N.E.2d 199 (1999).
- 5 U.S. Const. Art. II, § 2.
As to appointment of federal judges, generally, see *Am. Jur. 2d, Federal Courts* §§ 19 to 23.
- 6 *U. S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962).
- 7 *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004).
- 8 *Ex parte Levitt*, 302 U.S. 633, 58 S. Ct. 1, 82 L. Ed. 493 (1937).

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